

No.12157

United States
Court of Appeals
for the Ninth Circuit

ALEXANDER LAWRENCE ALPERS,
Appellant,

VS.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division

FILED

FEB 17 1949

PAUL P. O'BRIEN,

CLERK

No. 12157

United States
Court of Appeals
for the Ninth Circuit

ALEXANDER LAWRENCE ALPERS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Certificate of Clerk	11
Designation of Record on (DC)	11
Notice of	9
Statement of Points on (DC).....	10
Certificate of Clerk to Transcript of Record on Appeal	11
Designation of Record on Appeal (DC)	11
Information	2
Judgment and Commitment.....	8
Motion of Defendant to Dismiss Information..	5
Minute Order: Arraignment: Motion to Dismiss Information Denied; Plea of Not Guilty.....	7
Names and Addresses of Attorneys.....	1
Notice of Appeal	9
Statement of Points on Appeal (DC).....	10



NAMES AND ADDRESSES OF ATTORNEYS

HONE & LOBREE,
79 Post Street,
San Francisco, California.

Attorneys for Defendant and Appellant.

FRANK J. HENNESSY,
United States Attorney,
Northern District of California,
Post Office Building,
San Francisco, California. [1 *]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the
Northern District of California, Southern
Division

No. 31834-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEXANDER LAWRENCE ALPERS,

Defendant.

INFORMATION

(Title 18 USCA Section 396)

First Count:

The United States Attorney charges: That Alexander Lawrence Alpers, (hereinafter referred to as "said defendant"), did, on or about the 28th day of July, 1948, in the City and County of San Francisco, State and Northern District of California, knowingly deposit with an express company, to-wit: Railway Express Agency, for carriage in interstate commerce from the City and County of San Francisco, State of California, to the City of Olympia, State of Washington, a package containing certain matter of an indecent character, to-wit: phonograph records impressed with recordings of obscene, lewd, lascivious and filthy language and obscene, lewd, lascivious and filthy stories;

Said package was consigned to The Music Bar, 403 South Washington, Olympia, Washington.

Second Count:

The United States Attorney further charges: That the said defendant did, on or about the 18th day of August, 1948, in the City and County of San Francisco, State and Northern District of California, knowingly deposit with an express company, to-wit: Railway Express Agency, for carriage in interstate commerce from the City and County of San Francisco, State of California, to the City of Dallas, State of Texas, a package containing certain matter of an indecent character, to-wit: phonograph records impressed with recordings of obscene, lewd, lascivious and filthy language and obscene, lewd, lascivious and filthy stories;

Said package was consigned to The Blue Bonnet Music Company, 3235 Ross Avenue, Dallas, Texas.

Third Count:

The United States Attorney further charges: That the said defendant did, on or about the 13th day of August, 1948, in the City and County of San Francisco, State and Northern District of California, knowingly deposit with an express company, to-wit: Railway Express Agency, for carriage in interstate commerce from the City and County of San Francisco, State of California, to the City of Olympia, State of Washington, a package containing certain matter of an indecent character, to-wit: phonograph records impressed with recordings of obscene, lewd, lascivious and filthy language and obscene, lewd, lascivious and filthy stories;

Said package was consigned to The Music Bar,
403 South Washington, Olympia, Washington.

/s/ FRANK J. HENNESSY,

United States Attorney.

By /s/ DANIEL C. DEASY,

Assistant United States
Attorney.

United States of America,
State and Northern District of California,
Southern Division—ss.

Thomas P. Dowd, Jr., being first duly sworn,
says that he is a Special Agent of the Federal Bu-
reau of Investigation of the United States Depart-
ment of Justice, and as such is familiar with the
facts alleged in the foregoing Information, which
facts are true of his own knowledge.

/s/ THOMAS P. DOWD, JR.

Subscribed and sworn to before me this 22 day
of December, 1948.

(Seal) /s/ C. A. TROLLIST,

Deputy Clerk, U. S. District Court, Northern Dis-
trict of California.

WAIVER OF INDICTMENT

I, the undersigned, Alexander Lawrence Alpers,
named in the foregoing Information, being present
with my counsel in the United States District Court
for the Northern District of California, Southern
Division, at San Francisco, California, and having
been advised of the nature of the charge made
against me in the foregoing Information, and of my
rights, and understanding that the offenses charged

in said Information are felonies, do hereby, in open court, waive prosecution by indictment, and consent to be prosecuted by the foregoing Information instead of by indictment.

Dated: December 22, 1948.

/s/ ALEXANDER LAWRENCE
ALPERS,

Defendant.

/s/ DANIEL C. DEASY,
Witness.

/s/ HASKELL TITCHELL,
Counsel for Defendant.

[Endorsed]: Presented in Open Court and Ordered filed Dec. 22, 1948.

[Title of District Court and Cause.]

MOTION OF DEFENDANT TO DISMISS
INFORMATION

Now comes the defendant and not waiving his right to plead not guilty to the Information heretofore filed herein, moves that the Information be dismissed on the following grounds:

I.

That the Information and each and every part thereof fails to allege facts sufficient to constitute an offense under the laws of the United States.

Wherefore, this defendant prays that his motion be granted and that the Information be dismissed.

HONE & HONE,

By /s/ HASKELL TITCHELL,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 22, 1948.

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above entitled cause be tried before the Court sitting without a jury.

Dated: San Francisco, California, Dec. 22, 1948.

/s/ ALEXANDER LAWRENCE
ALPERS,

Defendant.

HONE & HONE,

By /s/ HASKELL TITCHELL,
Attorneys for Defendant.
/s/ DANIEL C. DEASY,
Assistant United States
Attorney.

Approved:

/s/ MICHAEL J. ROCHE,
Judge, United States District Court, Northern District of California.

[Endorsed]: Filed Dec. 22, 1948.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 22nd day of December, in the

year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

ARRAIGNMENT; MOTION TO DISMISS
INFORMATION DENIED; PLEA OF NOT
GUILTY.

In this case the defendant, Alexander Lawrence Alpers, in open Court, signed a waiver of Indictment. On motion of Daniel C. Deasy, Esq., Assistant United States Attorney, and presenting an Information against Alexander Lawrence Alpers for violation of Title 18 U.S.C.A., Sec. 396, the Court ordered that said Information be filed and made a record of this Court, that bench warrant issue for arrest and appearance of defendant, and that bail for release be fixed in sum of \$1000.00.

The defendant Alexander Lawrence Alpers was present in proper person and with his attorney, H. Titchell, Esq. On motion of Mr. Deasy, the defendant was called for arraignment. The defendant was informed as to the filing of the Information by the United States Attorney, and asked if he was the person named therein, and upon his answer that he was and that his true name was as charged, thereupon Mr. Titchell waived the reading of the Information and copy thereof was handed to him. The defendant stated that he understood the charge against him.

Mr. Titchell made a motion to dismiss Information, which motion, after hearing argument of the attorneys, was ordered denied.

The defendant was then called to plead and there-upon said defendant pleaded "Not Guilty" to the Information filed herein against him, which plea was ordered entered.

With the approval of the Court and consent of the Government, defendant waived trial by jury in writing. After hearing counsel herein, it is ordered that this case be continued to December 23, 1948, for trial.

District Court of the United States for the Northern
District of California, Southern Division

No. 31834-R

UNITED STATES OF AMERICA,

v.

ALEXANDER LAWRENCE ALPERS.

JUDGMENT AND COMMITMENT

On this 23rd day of December, 1948, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of violation of Title 18 USCA., Sec. 396, (Cts. 1 & 2) defendant shipped in interstate commerce, packages containing matter of an indecent character as charged in Cts. 1 & 2 of Information and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine to the United States of America, in the sum of One Hundred Dollars (\$100.00) on Each of Counts One and Two of the Information, making a total fine in the sum of Two Hundred Dollars (\$200.00) and in default of the payment of said, that defendant be imprisoned until payment of said fine or until said defendant is otherwise discharged by law.

Count Three Dismissed.

/s/ MICHAEL J. ROCHE,

United States District Judge.

/s/ J. P. WELSH,

Deputy Clerk.

[Endorsed]: Filed and entered this 23rd day of December, 1948.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Alexander Lawrence Alpers, 645 Leavenworth Street, San Francisco, California;

Name and Address of Appellant's Attorney: Hone & Lobree, by Haskell Titchell, 79 Post Street, San Francisco 4, California.

Offense: Violation Title 18 USCA 396 by depositing with Railway Express Company for shipment in interstate commerce packages containing obscene, lewd, lascivious and filthy phonograph records. Two counts.

Statement of Judgment: On December 23, 1948, defendant found guilty on two counts of depositing with Railway Express Company for shipment in interstate commerce of package containing obscene, lewd, lascivious and filthy phonograph records. Defendant fined \$100.00 upon each count.

The above-named appellant hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the above stated judgment.

Dated: December 30, 1948.

/s/ HONE & LOBREE,

Attorneys for Appellant.

[Endorsed]: Filed Dec. 31, 1948.

[Title of District Court and Cause.]

STATEMENT OF POINTS

The points upon which appellant intends to rely on this appeal are as follows:

1. The court erred in refusing to dismiss the Information for failure to allege facts sufficient to constitute an offense under the laws of the United States.

2. The court erred in determining that phonograph records were included in and covered by Title 18 USCA 396.

3. That the judgment is void.

Dated: December 30, 1948.

/s/ HONE & LOBREE,

Attorneys for Appellant.

[Endorsed]: Filed Dec. 31, 1948.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

I.

Appellant designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Information;
2. Defendant's Motion to Dismiss Information;
3. Minute Order of December 22, 1948, denying defendant's motion to dismiss Information;
4. Plea to Information;
5. Waiver of Trial by Jury;
6. Judgment;
7. Notice of Appeal;
8. Statement of Points on which Appellant intends to rely;
9. This Designation.

Dated: December 30, 1948.

/s/ HONE & LOBREE,

Attorneys for Appellant.

[Endorsed]: Filed Dec. 31, 1948.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing documents, listed below, are the originals, or true and correct copy of order entered on the minutes of this

Court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the Appellant.

Information

Motion of Defendant to Dismiss Information.

Waiver of Jury Trial.

Minute Order of December 22, 1948.

Judgment.

Notice of Appeal.

Statement of Points.

Designation of Record.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 11th day of January, A.D. 1949.

(Seal)

C. W. CALBREATH,
Clerk.

[Endorsed]: No. 12157. United States Court of Appeals for the Ninth Circuit. Alexander Lawrence Alpers, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed January 17, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court
of Appeals, Ninth Circuit

No. 12,157

ALEXANDER LAWRENCE ALPERS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S STATEMENT OF POINTS

The points upon which appellant intends to rely and the portion of the record which is material to the consideration of the appeal are the same as those heretofore designated by appellant at the time of filing his Notice of Appeal in this cause and as are specifically set forth in appellant's "Statement of Points" and "Designation of Record" filed in the United States District Court for the Northern District of California, Southern Division, in proceeding numbered 31834-R in the records and files of said court.

Dated: January 27, 1949.

/s/ HONE AND LOBREE,
Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed January 27, 1949.

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

1885

1886

1887

1888

1889

1890

1891

1892

1893

1894

1895

1896

1897

1898

1899

1900

1901

1902

1903

1904

1905

1906

1907

1908

1909

1910

1911

1912

1913

1914

1915

1916

1917

1918

1919

1920

1921

1922

1923

1924

1925

1926

1927

1928

1929

1930

1931

1932

1933

1934

1935

1936

1937

1938

1939

1940

1941

1942

1943

1944

1945

1946

1947

1948

1949

1950

1951

1952

1953

1954

1955

1956

1957

1958

1959

1960

1961

1962

1963

1964

1965

1966

1967

1968

1969

1970

1971

1972

1973

1974

1975

1976

1977

1978

1979

1980

1981

1982

1983

1984

1985

1986

1987

1988

1989

1990

1991

1992

1993

1994

1995

1996

1997

1998

1999

2000

2001

2002

2003

2004

2005

2006

2007

2008

2009

2010

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

2021

2022

2023

2024

2025

2026

2027

2028

2029

2030

2031

2032

2033

2034

2035

2036

2037

2038

2039

2040

2041

2042

2043

2044

2045

2046

2047

2048

2049

2050

2051

2052

2053

2054

2055

2056

2057

2058

2059

2060

2061

2062

2063

2064

2065

2066

2067

2068

2069

2070

2071

2072

2073

2074

2075

2076

2077

2078

2079

2080

2081

2082

2083

2084

2085

2086

2087

2088

2089

2090

2091

2092

2093

2094

2095

2096

2097

2098

2099

2100